

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SERGEY SPITSYN,
Plaintiff,

v.

RICHARD MORGAN, *et al*,
Defendants.

Case No. C04-5134FDB-KLS

ORDER REGARDING SERVICE
OF PLAINTIFF'S SECOND
AMENDED COMPLAINT

This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1), Local Magistrates Rules MJR 3 and 4, and Rule 72 of the Federal Rules of Civil Procedure. The case is before the Court on the filing of plaintiff's second amended complaint (Dkt. #79) and of defendants' answer (Dkt. #96). After reviewing plaintiff's second amended complaint, defendants' answer thereto, and the remaining record, the Court finds and orders as follows:

On May 10, 2006, plaintiff filed his second amended complaint. In that complaint, plaintiff names the following defendants, each of whom were defendants named in plaintiff's original complaint (Dkt. #1) as well: Richard Morgan, Al Scamahorn, Joseph Lehman, and Marge Littrell. Plaintiff also names in his second amended complaint, the following new additional defendants: Steve Fleenor, D. Snively, Captain Munden, Sheldon Weaver, and William Bermay. On June 29, 2006, a service of summons and complaint was filed with the Court, indicating that service via certified mail had been effected on all of the above named defendants. (Dkt. #95).

1 On July 13, 2006, the Court received a letter from counsel for defendants Morgan, Scamahorn,
2 Lehman and Littrell, dated July 12, 2006, to plaintiff, informing him that while service via certified mail
3 was proper on them pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 4, it was not proper
4 with respect to the new additional defendants. (Dkt. #97). Defendant's counsel, however, proposed that
5 plaintiff's attempted service be treated as a request for waiver of service. He further stated that he then
6 would enter a notice of appearance for those defendants, which would give them sixty days to respond to
7 the summons and complaint as indicated therein. Finally, defendant's counsel asked plaintiff to let him
8 know if this plan would work for him.

9 The next day, July 14, 2006, the attorney for defendants Morgan, Scamahorn, Lehman, and Littrell
10 filed an answer to plaintiff's second amended complaint on their behalf. (Dkt. #96). Defendant's counsel
11 stated in that answer that "[t]he remaining Defendants listed in the Amended Complaint have not yet been
12 served and therefore are not represented by counsel at this time," and that "[t]hey will supplement their
13 answer when service is effected." Id. at p. 1.

14 On July 20, 2006, the Court received a letter from plaintiff addressed to defendant's counsel, dated
15 July 18, 2006, in which plaintiff states that he accepted the above proposal with respect to service of the
16 new additional defendants. (Dkt. #98). In plaintiff's motion for furlough, which was filed on July 26, 2006
17 (Dkt. #99), and which the Court denied on September 21, 2006 (Dkt. #109 and #114), plaintiff states that
18 defendant's counsel had not informed him as to whether he would be representing the new additional
19 defendants and "treat the summons and the complaint as proposed." Id. at p. 2.

20 Given the above procedural history, it is unclear at this point whether counsel for defendants
21 Morgan, Scamahorn, Lehman, and Littrell has been requested to represent the new additional defendants
22 named by plaintiff in his second amended complaint, and whether those defendants will treat plaintiff's
23 attempted service on them as a waiver of service as set forth in his July 12, 2006 letter. Accordingly, the
24 Court hereby directs counsel for defendants Morgan, Scamahorn, Lehman, and Littrell to inform the Court
25 by **no later than November 24, 2006**, of the following: (1) whether he will be representing the new
26 additional defendants in this case; (2) if so, when a notice of appearance will be filed regarding such
27 representation; and (3) whether those defendants will treat plaintiff's prior attempted service as indicated in
28 his July 12, 2006 letter.

1 The Clerk is directed to send a copy of this Order to plaintiff and counsel for defendants.

2 DATED this 24th day of October, 2006.

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6 Karen L. Strombom
7 United States Magistrate Judge
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